

## **§ 226.5**

when approved by OMB. USAID may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the USAID Deputy Assistant Administrator for Management.

### **§ 226.5 Subawards.**

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients if such subrecipients are organizations which, if receiving awards directly from USAID, would fall within the definition of recipients. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as amended.

## **Subpart B—Pre-award Requirements**

### **§ 226.10 Purpose.**

Sections 226.11 through 226.17 prescribe forms and instructions and other pre-award matters to be used in applying for USAID awards.

### **§ 226.11 Pre-award policies.**

(a) *Use of grants and cooperative agreements, and contracts.* In each instance USAID shall decide on the appropriate award instrument (i.e., grant cooperative agreement or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or

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services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* USAID shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

### **§ 226.12 Forms for applying for Federal assistance.**

(a) USAID shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by USAID.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

### **§ 226.13 Debarment and suspension.**

USAID and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension," 22 CFR Part 208. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

### **§ 226.14 Special award conditions.**

If an applicant or recipient: Has a history of poor performance, is not financially stable, has a management